

Message Text

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ACTION EUR-12

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FM USMISSION USBERLIN

TO AMEMBASSY BONN IMMEDIATE

INFO SECSTATE WASHDC 592

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

C O N F I D E N T I A L USBERLIN 432

E.O. 11652: GDS

TAGS: PGOV, WB, GW

SUBJECT: PARTICIPATION OF FEDERAL PROSECUTOR IN
INVESTIGATION OF LORENZ AFFAIR

1. WE UNDERSTAND BONN GROUP WILL BE DISCUSSING THIS
AFTERNOON ACTIVITIES OF GENERALBUNDESANWALT (CHIEF
FEDERAL PROSECUTOR) IN BERLIN IN CONNECTION WITH LORENZ
AFFAIR. FOLLOWING INFORMATION MAY BE OF USE.

2. GENERALBUNDESANWALT HAS WIDE COMPETENCE IN BERLIN
MATTERS AS RESULT OF LEGISLATION ADOPTED IN BERLIN BY
MANTELGESETZ. THIS IS LOGICAL AND NECESSARY IN VIEW OF
FACT THAT MANY CRIMES INVOLVED PRIMARILY FEDERAL INTERESTS
OR CRIMINAL ACTIVITY AFFECTING BOTH BERLIN AND FRG. ON
OTHER HAND, HIS COMPETENCE IS MORE LIMITED THAN IT WOULD
BE IN FRG LAND BECAUSE CERTAIN LAWS, PRIMARILY RELATING
TO SECURITY CRIMES, HAVE NOT BEEN ADOPTED IN BERLIN OR
ARE SUBJECT TO SPECIAL MODIFICATIONS ALLIES APPROVED BERLIN
PROSECUTION OF MAHLER IN 1972 BY GENERALBUNDESANWALT AFTER BONN
GROUP DISCUSSIONS. (BONN 1530 OF 1972 ET- AL.)

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3. PUBLIC STATEMENTS OF ALL MAJOR BERLIN AND FRG FIGURES

IN RECENT DAYS HAVE EMPHASIZED THAT BASIC SIGNIFICANCE OF LORENZ CASE RELATES TO PRESERVATION OF STATE OF LAW (RECHTSSTAAT). ARTICLE 74 OF LAW ON COURTS (GERICHTS-VERFASSUNGSGESETZ) HAS PROVISION FOR GENERALBUNDESANWALT TO TAKE OVER FROM LAND AUTHORITIES CASE INVOLVING "DANGER TO THE DEMOCRATIC STATE OF LAW." THIS ARTICLE, WHICH ALSO INCLUDES SIMILAR PROVISION FOR CASES INVOLVING CERTAIN SERIOUS SECURITY MATTERS, HAS NOT BEEN ADOPTED IN BERLIN. ON OTHER HAND, APPARENTLY RELEVANT PARTS OF CRIMINAL CODE HAVE BEEN ADOPTED IN BERLIN, FOR EXAMPLE ARTICLE 105 UNDER WHICH GENERALBUNDESANWALT EXERCISES COMPETENCE IN CRIME INVOLVING BLACKMAIL OF FRG OR LAND GOVERNMENT ORGANS. GENERALBUNDESANWALT'S COMPETENCE UNDER THESE PROVISIONS IS APPROVED IN BERLIN BY BK/L(69)13 BUT IS LIMITED BY REFERENCE IN THAT BK/L TO BK/L(51)63 WHICH REQUIRES ALL FEDERAL OFFICIALS IN BERLIN TO OBEY ALLIED KOMMANDATURA ORDERS IN SAME MANNER AS BERLIN OFFICIALS. BK/L REQUIRES THAT ALLIES BE NOTIFIED, THOUGH NOT NECESSARILY IN ADVANCE, WHEN GENERALBUNDESANWALT INSTITUTES INVESTIGATION UNDER THESE PROVISIONS OF LAW. WE HAVE NOT YET RECEIVED FORMAL NOTIFICATION OF HIS INVESTIGATION.

4. COMMENT: WE WOULD THINK GOOD CASE COULD BE MADE FOR GENERALBUNDESANWALT'S COMPETENCE IN LORENZ INVESTIGATION, PARTICULARLY IN VIEW OF FACT THAT KIDNAPPING HAD DIRECT EFFECT UPON FRG THROUGH DEMAND THAT PRISONERS IN FRG BE RELEASED. ON OTHER HAND, HIGHLY VISIBLE PRESENCE OF MAJOR FEDERAL OFFICIAL IS BOUND TO PROVOKE CONTROVERSY. (NEUES DEUTSCHLAND MARCH 6 REPORTS TELEVISION COMMENT OF GENERALBUNDESANWALT AFTER ARRIVAL IN BERLIN THAT HE WILL "LEAD THE INVESTIGATION," AND ASKS RHETORICALLY "HOW THE USE OF FRG POLICE AND OTHER FRG OFFICES IN WESTBERLIN CAN BE RECONCILED WITH PROVISIONS OF THE FOUR POWER AGREEMENT ON WESTBERLIN.") WE WOULD THINK IT WOULD BE IN MUTUAL INTEREST FOR FRG TO PULL GENERALBUNDESANWALT OUT OF BERLIN AS SOON AS POSSIBLE, LEAVING WORK OF HIS OFFICE TO HIS REPRESENTATIVE WHO IS NORMALLY STATIONED HERE, AND RESTRICT SUCH PUBLIC STATEMENTS AS ARE NECESSARY TO NOTING THAT THERE IS COMMON INTEREST, CONFIDENTIAL

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AND TO SOME EXTENT COMMON COMPETENCE, OF BERLIN AND FRG OFFICIALS GIVEN NATURE OF CRIME. GEORGE

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